in 1935, and had increased to 200,000 shares. (Record of Hearings of such subcommittee, p. 2966) This was about 40 per cent of the outstanding stock.

The control over these three sports arenas violated Regulations of the National Hockey League (hereafter NHL), comprising six Clubs. Article VIII (a) of NHL Constitution provides that no member shall exercise control, directly or indirectly, over the hockey franchise issued to any other member of the NHL (p. 3020 of the Hearings).

Thus the MSG-Norris-Wirtz group violated NHL Regulations long before Petitioner was in 1945 invited to expand the League by acquisition of an inactive franchise (RESOLUTION of NHL Governors December 14, 1945), in which construction by Plaintiff of a sports arena in Philadelphia was a prerequisite. (App. 'A', *infra*, p. 2a, Rec. p. 193)

In reliance upon such invitation, Petitioner acquired property in Philadelphia, employed architects, engineers, and contractors, and sought to develop attractions which would be staged in the completed arena, notably professional hockey and professional championship boxing. (Rec. pp. 199-202) However, before construction actually commenced, the U.S. Government issued regulations prohibiting construction of sports arenas. (Rec. p. 809) On May 13, 1947, the U.S. Government issued a partial permit for the foundation construction of structural steel only, (Rec. p. 803), but with restrictions which were prohibitive to those who had tentatively agreed to advance mortgage money (60 percent of the construction cost). (Rec. pp. 201, 811) The restrictions were not removed until April 1, 1948, leaving insufficient time for the financing and building

of the arena by the deadline of June 1, 1948 (Rec. p. 202). On June 10, 1948, the Governors of the NHL declined further to extend the time under their Resolution for the completion of the arena. (Rec. 203) Thereafter, on June 11, 1948, Petitioner learned that his inactive franchise had become non-existent, due to the inception of a new agreement on October 14, 1947 between the six clubs comprising the NHL. (Rec. p. 204) Therefore, the hold on the inactive franchise could no longer be extended, and Petitioner continued under a verbal agreement with the NHL for a new franchise, to be made available if and when the arena was completed by him. (Rec. pp. 207, 266)

In the meantime, Walter Annenberg, named as a Defendant in Petitioner's suit, but not served, withdrew his offer of financial participation with Petitioner, and through his family corporation, Triangle Publications, Inc., acquired a small existing arena in Philadelphia, and thereafter actively participated in all sports arena business. He had received what he considered to be "satisfactory assurances" that Petitioner would never get a major hockey franchise in Philadelphia. (Rec. pp. 813; 816-819)

Also, throughout 1948, Respondents MGS, Wirtz, and Norris were concerned about the fact that the Columbia Broadcasting System had acquired an interest in Tournament of Champions, Inc., organized in New Jersey in 1947, and extended in 1948, through an affiliate, to promote boxing matches in New York. (150 F. Supp. 397, 415, par. 134) MSG, Wirtz, and Norris conferred together, and suggested a joint program to prevent others, particularly Columbia Broadcasting System, from competing with their various sports

arenas. (150 F. Supp. 397, 411, par. 103) With many TV receivers in the New York Metropolitan Area, the latter could not be blacked out, without materially reducing value of the TV rights to the sponsors. (150 F. Supp. 397, 406, par. 44, *supra*)

On May 10, 1948, announcement appeared in the Montreal press that Petitioner was in negotiation with Tournament of Champions, Inc., which reportedly had applied for a franchise from the NHL for operation of a sports arena which Tournament of Champions, Inc., proposed to build in Brooklyn. (Rec. p. 199) Petitioner informed the NHL that his negotiations with the Tournament of Champions, Inc., related to proposed boxing championship matches which he expected to put on in 1949; that Tournament of Champions, Inc. had inquired as to possible financial participation with Petitioner, and that further talks had been invited. Respondents had knowledge of such facts. (Rec. 199-200) In due course, to wit, May 27, 1949, Respondents eliminated competition in the fields of sports arenas and championship boxing matches, by purchasing the Tournament of Champions, Inc. (150 F. Supp. 137, 416, par. 144), which was an offense charged against Respondents MSG, Wirtz, and Norris, in *United States* v. *International Boxing Club,* et al, *supra.* Further under agreement between Respondents and the Columbia Broadcasting System, the latter undertook not to invest in any professional boxing matches, or in their promotion or staging, or have any proprietory interest in them, for a period of five years from June 1, 1949. (150 F. Supp. 397, 416, par. 145)

At the same time, (May 31 and June 1, 1949) (Rec. pp. 208; 268; 269) Petitioner reported to the NHL

Governors that Langley & Company, New York bankers and stock brokers, and associates, were endeavoring to reach NHL Governor James Norris, a valued customer, for approval of Langley's intention to finance Petitioner's sports arena in Philadelphia. Respondents avoided contact with Langley while completing the monopoly of which the Government complained, by intruding between Petitioner and the Tournament of Champions, Inc. In a letter dated June 14, 1949 to NHL, Petitioner charged "collusive and fraudulent" conduct, (App. *infra,* Rec. p. 269), but nevertheless continued to endeavor to promote the sports arena. He was further restrained by a new U.S. Government ban, effective September 9, 1950, until April 1, 1953, upon the construction of sports arenas, but Petitioner sought otherwise to consolidate his position in Philadelphia. (Rec. pp. 284-295) On June 9, 1955, Respondents Wirtz and Norris ousted MSG Chairman Bernard Gimbel, former MSG Chairman Stanton Griffis, and Jansen Noyes (both partners in Hemphill Noyes and Company), and John D. Hertz of Lehman Brothers, and other persons who had served as Directors of MSG for many years. Petitioner, supposing that Hemphill Noyes and Company would have no further loyalty to or interest in MSG, sought to have his counsel, Maurice Saul, and his bankers, Auchincloss, Parker & Redpath, solicit participation by Hemphill and others who had previously been willing to participate with Petitioner. (Rec. pp. 824-828) However, Hemphill was diverted by Respondent Kilpatrick, and the efforts of above counsel and bankers came to naught. (Petitioner's affidavit, Rec. p. 264, and Saul's letter to him, June 10, 1955, Rec. p. 755)

On February 21, 1956, Petitioner entered into an agreement to sell his property and interests at Philadelphia. (Rec. p. 702)

On March 10, 1958, Petitioner brought suit in the United States District Court, Southern District of New York, against Respondents for treble damages under the Sherman and Clayton Acts. (Rec. pp. 1-4) Respondents pleaded a general denial, and as an affirmative defense the state statute of limitations. By amendment they further pleaded the limitations in Section 4B of the Clayton Act (15 U.S.C., Section 15B, also referred to as Section 4B). Respondents deposed Petitioner on December 10 and 11, 1958. Delays ensued due to the fact that Respondents Norris and Wirtz disposed of their holdings in MSG pursuant to Court order in *United States* v. *International Boxing Club,* 151 F. Supp. 841, affirmed 358 U.S. 242. Respondents again deposed Petitioner on January 29, 1960. Interrogatories to the parties and pre-trial conferences followed, and in November 1963, trial counsel were designated. (Rec. pp. 173-178) On February 27, 1964, Respondents noticed the filing of a Motion for Summary Judgment, which the Court denied on March 10, 1965 (App. A, *infra* 12a). On March 19, 1965, Respondents moved for leave to re-argue their Motion for Summary Judgment (App. B, *infra* pp. 13a-14a) which the Court on November 15, 1965 granted to the extent of requiring Petitioner to take the depositions of Cliff Hemphill and John D. McGeary (App. C, *infra* p. 15a). Petitioner then contended that such depositions were unnecessary under the Supreme Court decision on November 8, 1965, in *Leh* v. *General Petroleum Corporation,* 382 U.S. 54. However, the District Court on April 1, 1966, adhered to its decision of

March 10, 1965, and ordered the two depositions to be taken. (App. D, *infra* pp. 15a-17a) McGeary was thereafter deposed but Hemphill, through a medical certificate dated July 19, 1965, claimed physical disability. (Rec. 529) Respondents' Motion for Summary Judgment was granted on November 30, 1966, on the ground of Federal limitations (App. E, *infra* pp. 17a-23a). Petitioner then appealed to the United States Court of Appeals, which on October 27, 1967, affirmed the decision of the District Court (App. G, *infra* pp. 26a-28a). Motion for Rehearing was denied November 16, 1967 (App. H, *infra* p. 28a).

REASONS FOR GRANTING THE WRIT

1.

As noted by the Court of Appeals (App. G-27a), Petitioner invokes Section 5(b) of the Clayton Act (15 U.S.C., Section 16b).

The pertinent part of that Section is as follows:

> "Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the anti-trust laws, but not including an action under 15 a of this title, the right of action arising under said laws and *based in whole or in part on any matter complained of in said proceeding* shall be suspended during the pendency thereof and for one year thereafter; —" (Italics supplied)

In its decision the Court of Appeals compares the Complaints in Petitioner's case, and in *United States* v. *International Boxing Club,* 150 Fed. Supp. 397 (1957), affirmed 358 U.S. 242 (1959), upon which Petitioner relies. While, in general, consideration of the applicability of Section 5(b) can be limited to a com-

parison of the two Complaints on their face (*Leh* v. *General Petroleum Corporation,* 382 U.S. 54), it is to be recalled that Petitioner endeavored through competition to end a monopoly of sports arenas which the Government thereafter ended through discontinuance and dissolution, in *United States* v. *International Boxing Club,* supra. Thus a difference in the wording of the two Complaints was inevitable, but does not extinguish the fact that the acts complained of were in part of like intent and purpose, and involved the same sports arenas and the same principal defendants. Plaintiff did not complain specifically about a monopoly of championship boxing, but such was implicit in sports arena operations. (*United States* v. *International Boxing Club,* supra, page 411, par. 90).

During a pre-trial deposition on January 29, 1960, the Petitioner on examination by Respondents gave the following answers as to the basic character of his Complaint:

A. "The purpose of the combination [by Respondents] was to maintain control of the operations of the large arenas in the eastern part of the United States." (Rec. 781)

A. "And they succeeded in maintaining control of boxing—and the television of the same."

Q. "You are not complaining about boxing, I take it?"

A. "It is one of those things which, naturally, is part of the arena operation." (Rec. 782) * * *

Q. "What I am trying to find out, Mr. Peto, is whether there was more than one or several conspiracies against you. The word 'conspiracy' is used in about three paragraphs in this complaint, and I have about concluded that what you are

> complaining about is that these defendants conspired to prevent you from building a sports arena in Philadelphia. That is your basic complaint against them. Am I wrong?"
>
> A. "No. That is right." (Rec. 805)

The Court established in *United States* v. *International Boxing Club,* supra, that one reason for the combining of forces by MSG, Wirtz, and Norris was the importance of the arenas of the areas controlled by Wirtz and Norris. So important to such monopoly were the holdings in MSG of Wirtz and Norris that the Court in *United States* v. *International Boxing Club,* supra, compelled them to dispose of their such holdings, and ordered that their own arenas be made available to any legitimate competitor in the promotion of events in the arena.

In other words, the control of the arenas was the heart of the monopoly.

In its affirmation of *United States* v. *International Boxing Club,* supra, the Supreme Court stated (358 U.S. 242, 261):

> "We found that one of the means used in effectuating the conspiracy was the ownership and control of arenas and stadia."

The right of action in Petitioner's suit, and in *United States* v. *International Boxing Club,* supra, arose out of the same laws, and the right in Petitioner's suit was based, certainly in part at least, on matter complained of in the Government suit. Therefore, the section of the Clayton Act, above quoted, and upon which Petitioner relied, was clearly applicable, giving Petitioner until February 1960 (one year after the

termination of the Government suit) for filing his suit. Petitioner filed his suit on March 17, 1958, which was timely, and the holding that his action was barred by Federal limitations is error.

2.

The Court of Appeals found that the conspiracies in Petitioner's suit, and in *International Boxing Club,* supra, cover "different periods of time" (App. G., infra 27a), thereby accepting Respondents' contention that Petitioner's cause of action accrued June 10, 1948, while the conspiracy complained of in the Government suit did not commence until January 1949.

(a)

The monopoly of sports arenas ante-dated the conspiracy to monopolize championship professional boxers, and supplied the means for the second part of the completed monopoly. The Government was uncertain as to when the second part of the conspiracy commenced, *United States* v. *International Boxing Club,* supra. Findings of Fact reveal that talks were taking place throughout 1948; that Respondents were especially concerned about Tournament of Champions, Inc. and its promotion of a championship bout between Zale and Graziano in Newark in June 1948, as related in the press, by which Respondents were on notice that Petitioner was negotiating with Tournament of Champions, Inc. (Rec. 199). Respondents also thereby were aware of the menace through Petitioner's projected arena, and of the additional hazard presented by a possible combination of Petitioner and Tournament of Champions, Inc., in promotion of professional championship contests. Respondents were also aware of Petitioner's talks with Gene Tunney, which MSG's Board Chairman, Bernard Gimbel, had shunned due to alleged "conflict of interest" (Rec. 827).

As illustrated here, formative details and stages of alleged conspiracy often ante-date the infliction of injury, and evidence thereof is admissible (*Klein* v. *American Luggage Works, Inc.* (DC Del. 1962, 206 F. Supp. 924).

Thus, the conspiracy about which the Government complained was forming around and against Petitioner throughout 1947 and 1948.

(b)

Petitioner's cause of action did not accrue in June 1948.

His option of a hockey franchise terminated June 10, 1948, merely because the franchise itself had become extinct through the new Constitution entered into October 14, 1947, among the six clubs comprising the NHL (Rec. 204, 209). The District Court did not mention such fact, but did find that Petitioner thereafter continued to promote his sports arena in the expectation that a hockey franchise would be made available when necessary financing had been assembled for the sports arena. (App. A., infra 6a) In such respect the District Court quoted from Petitioner's letter May 26, 1949 to Clarence S. Campbell, President of NHL, (Rec. 207), and noted that Campbell replied on June 7, 1949, but the Court omitted the following first paragraph of such reply:

> "This will acknowledge receipt of your note of May 31st and also your telegram of June 1st, which I have shown to Mr. Norris, as I indicated I would do in my letter of acknowledgment of yours of May 26th. . . ." (Rec. 208)

The acknowledgment of the letter of May 26, 1949 is of prime importance concerning Petitioner's under-

standing in June 1948 that the franchise would be made available to him when the sports arena was adequately financed and satisfactorily sponsored. (Rec. 207; App. A, infra 5a, 6a)

Such acknowledgment was not placed in evidence with the letter of May 26, 1949, and so the Court was misled.

The second paragraph of the letter of June 7, 1949 (Rec. 208) from Campbell to Petitioner, also passed over by the District Court, reports that Norris knew the sponsor named by the Petitioner but had not discussed Petitioner's sports arena with such sponsor or anyone else during the past year (June 1948-June 1949). Petitioner's note of May 31, 1949, and telegram of June 1, 1949, were merely to advise Norris that that sponsor desired to talk with him about Petitioner's arena, but had been unable to reach him. This was because Norris was engaged in negotiations with Tournament of Champions, Inc. and Columbia Broadcasting System, and in other conspiracies harmful to Petitioner. Campbell's statement, allegedly on behalf of Norris; that the latter had not talked with such sponsor or anyone else during the year about Petitioner's sports arena was untrue, because Governor Smythe of the NHL had discussed the situation with Norris in April 1949. (Rec. 277)

Smythe's acknowledgment of Petitioner's letter of April 11, 1949 was also kept from the Court.

(c)

The conspiracy of which the Government complained in its suit continued until the conspiracy was dissolved by order of the Court, February 1959, in *International*

Boxing Club v. *United States*, 358 U.S. 242. The Court in its decision stated:

> "This illegal activity gave appellants an odorous monopoly background which was known and still feared in the boxing world." (254)
>
> "At the time the decree was entered by the District Court appellants still possessed all the power of monopoly and restraint." (254)
>
> "Control remained effective up to the very date of the final hearing June 24, 1957." (257)
>
> "In fact from all appearances is continuing to this day." (258)

Fear and the odorous monopoly background were effective restraints in both matters—the Government's and Petitioner's.

(d)

> "Conspiracy, ordinarily, is not proved by direct evidence in the manner as is an action on a written contract. The very nature of a conspiracy has its base in secrecy toward the party to be duped or the law to be evaded, and can only be accomplished by pressing together the fragments of evidence as to conduct, speech and writings of the parties to the conspiracy." (U.S. v. General Railway Signal Co., D.C.W.D.N.Y. 110 F. Supp. 422)

The Court of Appeals erred in holding that the conspiracies covered "different periods of time."

3.

In responding to Petitioner's objection against excising words and phrases from pre-trial depositions, Respondents' counsel stated:

> "I am, however, filing with this Motion the original transcripts of all of plaintiff's depositions." (Rec. 312)

The Court records and dockets contain no such depositions.

By affidavit September 30, 1967, Petitioner submitted to the Court of Appeals photocopies of a number of documents identified during pre-trial depositions, but which were withheld from the District Court.

If Petitioner's Motion for Enlargement of the Record is granted, it will be made clear by him why Respondents withheld transcripts of all of Petitioner's depositions, and also why they withheld a Motion for Summary Judgment for more than four years after Petitioner had been deposed, and had produced upwards of more than 400 documents, from which a mere handful were used in support of such Motion, on February 25, 1964.

Petitioner had always been prepared for trial with evidence produced on depositions taken by Respondents in December 1958, and January 1960, and with witnesses specified by Petitioner in such depositions. Respondents, having been put on notice by Petitioner on June 14, 1949 of 'collusive fraudulent' conduct, would write nothing which could be used against them. Those who referred to such giants in the sports arena business, and were diverted from sponsorship of Petitioner, could not be expected to give him written confirmation which he could use in an action such as this, and thus incur hostility, or lose friends and valued clients, as with Langley & Company. Summary judgments "are not appropriate where motive and intent play leading roles" (*Alles Corp.* v. *Senco Products, Inc.*—C.A. Ohio, 329 F.2d 567, 1964).

With evidence of misconduct and suppression which deprived plaintiff of a fair hearing, the Court of Appeals erred in not reversing for trial on the merits.

4.

Practical difficulties in securing admissible written evidence of overt acts subsequent to June 14, 1949, were compounded through suppression and theft of Petitioner's records, which commenced as early as 1960. (App. F infra 25a) Apart from prospective witnesses named in letters (Rec. 273-292), Petitioner was compelled to rely on hearsay as to events within four years prior to the date his action was commenced. He named Clifford Hemphill, of Hemphill Noyes and Company, and John D. McGeary of Auchincloss, Parker and Redpath, bankers, as having been diverted by Respondents Kilpatrick and MSG (Rec. 264). The District Court declared that "as to Kilpatrick, the date when he 'warned' Hemphill may be considered an issue in dispute." (App. A infra 10a) One word from Hemphill, yes or no, as to whether Kilpatrick diverted Hemphill from participation with Petitioner, would be decisive on the motion for summary judgment, but the Court did not exercise its prerogative to question Hemphill.

Through no fault of his, Petitioner did not learn of the opinion of March 10, 1965 (App. A) and of Respondents' motion for leave to re-argue (App. B), until late in August, 1965 (App. F Infra 25a), nor that Hemphill had taken refuge from being deposed through a medical certificate July 19, 1965, (Rec. 529), although Respondents asserted April 26, 1966, that Hemphill currently travelled from his home in New Jersey to his office of New York (Rec. 614-615). The medical certificate upon which the Court relied is dated four months prior to the Court's order to depose Hemphill (App. G infra 15a), but the Court chided Petitioner for not deposing him (App. E infra 18a).

The Court declared that as to Kilpatrick, McGeary "stated unequivocally that he had neither met defend-

ant [Kilpatrick] nor conversed with him although he knew of said defendant's identity" (App. E Infra 18a) McGeary's statement appears at record 560-563.

McGeary likewise stated that his senior partner Redpath "never took any active part in this thing"; (Rec. 561) that Petitioner didn't know anyone in the New York office—thus excluding Redpath (Rec. 579). This was untrue. Redpath gave the written assurances to the NHL (Rec. 196); conferred with Petitioner and NHL officers (Rec. 201); made all decisions in this six million dollar promotion, (Rec. 688-690).

McGeary knows Noyes; made a presentation of Petitioner's project to Hemphill, Noyes & Company, but doesn't recall their response (Rec. 567); advised prospective investors that MSG was opposed (Rec. 594); was "aware that Mr. Kilpatrick was opposed to it" (Rec. 561); knew Cliff Hemphill; was in the war with brother Al Hemphill; knew the firm quite well (Rec. 564) in the regular course of business on Wall Street.

McGeary testified that the Peto project was dead, in his firm, after 1953; that he was not involved in any *further* negotiations with Madison Square Garden people (Rec. 639-640) (emphasis supplied)

When confronted with the Saul letter June 10, 1955, in which Saul relates that McGeary's partner, Putnam, will cause inquiries to be made as to Hemphill Noyes, McGeary was silent (Rec. 638).

McGeary destroyed his records in 1960-1961 (Rec. 592), after two demands had been made on him for records dealing with his negotiations with Prudential Insurance Company, prospective participant for Petitioner (Rec. 822-823). The District Court absolved McGeary without seeing him (App. E infra 20a).

The District Court may have been misled by suppression of records as to McGeary, as also by suppression of Campbell's responses to Petitioner's letter May 19, 1948 (Rec. 199-200), which discloses Petitioner's negotiations with Tournament of Champions, Inc. Such responses were submitted during Petitioner's pre-trial deposition and marked as D-98/H;i, dealt with in Petitioner's affidavit, September 30, 1967. (See Motion, page 21)

The duty of a Court was proclaimed by former Associate Justice of the Supreme Court Owen J. Roberts, in a decision rendered during extra curiam activity in December 1933. Acting on a Motion made by the United States Government, Justice Roberts declared:

> "The petition, in short, avers the Commission has been misled by fraud and collusion on the part of witnesses and suppression of evidence on the part of some of them. The Commission is not *functus officio*. It still sits as a Court. To it in that capacity are brought charges that it has been defrauded and misled by perjury, collusion, and suppression. No tribunal worthy of its name or of any respect may allow its decision to stand if such allegations are well-founded. Every tribunal has inherent power to reopen and to revise a decision induced by fraud. If it may correct its own errors and mistakes, *a fortiori* it may, while it still has jurisdiction of a cause, correct errors into which it has been led by fraud and collusion.
>
> I am of opinion therefore that the Commission has power to re-open these cases, and should do so * * *" (Dec. 15, 1933; Report of the American Commissioner Hon. Chandler P. Anderson, August 23, 1934, Mixed Claims Commission, United States & Germany.)

The validity of the reopening, and eventual award in favor of the United States, were confirmed by the Supreme Court in January 1941.

CONCLUSION

For all of the foregoing reasons, it is earnestly urged that this Petition for Writ of Certiorari be granted.

Respectfully,

LEONARD A. PETO
Petitioner, Pro Se

Supreme Court of the United States

OCTOBER TERM, 1967

No.

LEONARD A. PETO, *Petitioner*

v.

MADISON SQUARE GARDEN CORPORATION, ET AL.

Motion for Enlargement of Record

Petitioner moves to admit evidence suppressed from the District Court by Counsel, as indicated in a Motion to the Court of Appeals June 13, 1967 (APP F 24a); thereafter (such evidence) re-possessed by Petitioner; submitted to the Court of Appeals under affidavit September 30, 1967 and certified by the Clerk of the Court of Appeals as a "brief" but which is a verification of photocopies of vital evidence, seemingly ignored by the Court of Appeals, but which bears heavily on reasons why a Writ of Certiorari should be granted; also to admit a letter from Counsel for Petitioner, to the District Court, prior to determination of the Motion for summary judgment, which, it is believed, invalidates the entire proceedings, but on which the District Court remained silent.

Petitioner has deposited with the Clerk of this Court ten copies of his affidavit dealing with the foregoing matters.

Respectfully submitted,

LEONARD A. PETO
Petitioner, Pro Se